

Before the  
**Commission on Common Ownership Communities**  
**Montgomery County, Maryland**

**In the matter of**

Carl Brown	x	
#404	x	
9900 Georgia Avenue		x
Silver Spring, MD 20902,	x	
<b>Complainant,</b>		x
	x	
v.	x	<b>Case No. 42-09</b>
	x	June 30, 2010
	x	
Americana Finmark Condominium		x
Association	x	
c/o Raymond Via	x	
Whiteford, Taylor & Preston		x
1025 Connecticut Avenue, N.W.	x	
Washington, D.C. 20036	x	
<b>Respondent.</b>		x

**DECISION AND ORDER**

The above-captioned case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended, and the duly authorized Hearing Panel having considered the testimony and evidence of record, finds, determines, and orders as follows:

**Background**

Carl Brown, owner of unit 404, 9900 Georgia Avenue, Silver Spring, a unit in the Americana Finmark Condominium Association filed a complaint with the Office of Common Ownership Communities in the Office of Consumer Protection against the Americana Finmark Condominium Association (the "Association") on July 20, 2009. The complaint alleged that the Association has improperly withheld Association documents from inspection, that the number of Board members was improperly changed at the last Association annual meeting, and that funds from the capital reserve account were improperly used for operating expenditures.

The parties have worked out the issues related to inspection of documents and the Association otherwise denies acting improperly.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to section 10B-11(f) of the Montgomery County Code on January 6, 2010, and the Commission voted that this is a matter within its jurisdiction. The case was scheduled for a hearing on March 25, 2010. The hearing was continued to April 22, and the issues related to the change in number of board positions only were heard at that time. The record on the change in the number of board positions was complete and closed at the conclusion of the hearing. The case remains open on issues related to capital reserve expenditures.

### **Findings of Fact**

Mr. Brown testified that at the Association annual meeting held in June, 2009 (convened in accordance with the Bylaws on the third Wednesday in May and adjourned to June 17 when a quorum was present and the meeting was held), the number of positions on the Board was reduced from seven to five by majority vote of members present in person and by proxy. Mr. Brown argued that this was in effect an amendment to the Bylaws and required the vote of two-thirds of the value of the community in accordance with Article XVI.

The Bylaws, at Article V, establish that the Board shall be composed of an uneven number of at least three and not more than nine natural persons. The Bylaws do not specify how the number of positions should be chosen. The original Board had had three positions. More recently the Board had seven positions. Neither Mr. Brown nor Mr. Jim Rocco, the current Treasurer and immediate past President, knew when or by what process the Board had been changed from three to seven.

Mr. Rocco testified that notice of the annual meeting had been distributed to all unit owners in March with a request that nominations for the Board of Directors be submitted to the Association office by April 14<sup>th</sup> so that ballots could be produced in time for distribution before the meeting. After the deadline passed, the manager notified Mr. Rocco, then the President, that there was only one candidate for the Board and there were three vacancies.

The Board then decided to ask the owners to reduce the number of Board positions to five and that the appropriate approach to doing so would be by majority vote of the membership of the Association. The issue was placed on the proxy form. A majority of the ownership, but less than the two-thirds required to amend the Bylaws, voted in favor of reducing the number of Board positions.

## **Discussion**

The Board was faced with the apparent dilemma of potentially having vacant positions after the annual meeting. They could have waited to see if there would be nominations from the floor at the annual meeting, which in fact there were. They could have filled vacancies by appointment after the meeting. But they chose to ask the membership to reduce the number of positions.

## **Conclusions of Law**

There is no provision in the Association documents or state or county law that requires amendment of the Bylaws of this Association to change the choice of the number of Director positions from one to another of the odd numbers between three and nine. In the absence of a mandated process, the decision of a majority of the ownership is a reasonable means to make such a choice.

## **ORDER**

Based on the evidence contained in the record, and for the reasons set forth above, Complainant's request for relief as to the issue of the change in number of Director positions is denied.

The foregoing was concurred in by panel members Gelfound and Kali.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.

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Dinah Stevens, Panel Chairwoman  
Commission on Common Ownership Communities  
June 30, 2010